

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Case No.

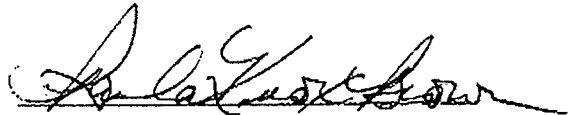
City of Rock Hill.....Appellant,

v.

Christopher Gessner.....Respondent.

I, Paula Knox Brown, hereby certify that I served the Notice of Appeal on Michael Brown, Esquire, by depositing a copy of the document in the United States mail on the 19th day of November, 2014, with sufficient postage affixed, to be forwarded to his office. The envelopes were addressed as follows:

Michael L. Brown, Esquire
Post Office Box 1025
Rock Hill, SC 29731



Paula Knox Brown
City Solicitor
201 E. Main Street, Suite 300
Rock Hill, SC 29730
803-329-5641

November 20, 2014



FAX COVER SHEET

TO: The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
@ 803-734-1839

cc: Michael Brown, Esquire
@ 328-0523

FROM: Paula Knox Brown
City Solicitor

DATE: November 20, 2014

RE: City of Rock Hill v. Christopher Gessner

Please see the attached letter and documents, which are being served on Appellant and forwarded for filing to this Court by mail.



CITY OF ROCK HILL SOLICITOR'S OFFICE

201 E. MAIN STREET, 3RD FLOOR, ROCK HILL, SOUTH CAROLINA 29730
OFFICE 803/329-5619 FACSIMILE 803/326-3865



November 20, 2014

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

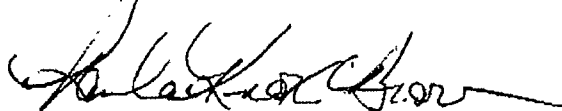
The Honorable David Hamilton
York County Clerk of Court
Post Office Box 649
York, South Carolina 29745

RE: The City of Rock Hill v. Christopher Gessner
Case No. 2013-CP-46-01010

Dear Ms. Kitchings and Mr. Hamilton:

Being unsure of the posture of this case, given the fact that the above-respondent's appeal of the original Circuit Court Order was remanded to Circuit Court for consideration of a Rule 60(b) motion and the fact that the motion resulted in an Order which I now need to appeal, I am enclosing the City's Notice of Appeal with Certificate of Service of same. I am also forwarding two (2) additional copies to the Court of Appeals; and, I am asking Ms. Kitchings to return two (2) clocked copies to me.

Respectfully yours,



Paula Knox Brown
Attorney for Appellant

cc: Michael L. Brown, Esquire



CITY OF ROCK HILL SOLICITOR'S OFFICE

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
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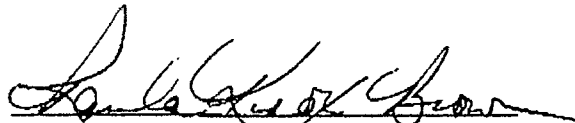
City of Rock Hill.....Appellant,

v.

Christopher Gessner.....Respondent.

NOTICE OF APPEAL

The City of Rock Hill appeals the judgment of the Honorable John C. Hayes, III, dated November 10, 2014, and postmarked November 12, 2014. Appellant received written notice of entry of this judgment by mail to undersigned counsel on or about November 13, 2014.



Paula Knox Brown, Bar #69564
Attorney(s) for Appellant
201 E. Main Street, Suite 300
Rock Hill, South Carolina 29730
803-329-5641

November 20, 2014
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Christopher D. Gessner,)
)
 Plaintiff,)
)
 vs.)
)
 City of Rock Hill,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-46-01010

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SC Court of Appeals

ORDER

The Court of Appeals, by Order filed August 13, 2014, remanded this case to the York County Court of Common Pleas to review its Order in Christopher D. Gessner v. The City of Rock Hill, 2013-CP-46-1010, in light of a Rule 60(b)SCRCP motion entered by Gessner.

This is a first for the undersigned and exactly how to proceed is somewhat problematic. The Order from the Court of Appeals references no authority for the remand, however, Rule 240, SCACR, provides for same.

The grounds for the motion do not raise any issue readily cognizable under Rule 60(b) unless by a stretch Rule 60(b)(5) opens a door for review. While there is no prior judgment which has been reversed or vacated, the undersigned in City of Rock Hill v. Stroupe, 2014-CP-46-239, held that the Supreme Court ruling in State v. Sawyer, 2014 WL 4214429 (S.C. Aug. 27, 2014) made it clear to the Court that applying a substantial compliance standard in § 56-5-2953 case was incorrect. Sawyer, makes it clear that strict compliance is the standard courts must apply in analyzing compliance by law enforcement with § 56-5-2953. This is true even though the results may appear absurd as they did to the Court in City of Rock Hill v. Stroupe, 2014-CP-46-239).

J. H. H. C.

Applying a strict compliance standard to § 56-5-2953 requires, of course, total compliance. Therefore, if there are errors in the recording of one's conduct in a field sobriety test, the test fails to conform to the requirements of § 56-5-2953. It follows, that such error requires dismissal of the charges. See City of Rock Hill vs. Suchenski, 374 S.C. 182, 646 S.E.2d 874 (Ct. App. p. 2007).

In Gessner's case the Court has noted the onsite video recording did not capture Gessner's entire performance of the walk and turn test. Based on this "insignificant deficiency in the recording of [the] field sobriety test." the Court found no statutory violations. Sawyer, appears to render the Court's findings in the Order in this case erroneous.

The dilemma now is what can this Court do with this case as it is on appeal and was remanded for consideration of a Rule 60(b) SCRPC motion? Applying what the Court deems to be the Court of Appeals stretch, I find the Sawyer decision, at least to the extent of this Court reliance on it, at least clarified and at best vacated by ruling, the undersigned's application of Murphy v. State, 392 S.C. 626, 709, S.E. 2d 685 (Ct. App. 2011). This being the case, the Court grants Gessner's Rule 60(b) SCRPC motion, vacates the Order herein dated April 3, 2014, and grants Gessner's appeal from the Municipal Court of the City of Rock Hill. This results in the City Court's verdict of guilty being reversed and set aside and the charges on which said conviction was based dismissed.¹

IT IS SO ORDERED.

November 16th, 2014
York, South Carolina



John C. Hayes, III
Presiding Judge

¹ The Court has absolutely no idea where this case is now procedurally postured. The Court is confident the parties and the Appellate Courts can figure this out.